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REPORTS

NOTES OF THE WEEK

Husband and Wife: Receiving Stolen Goods

A man was recently sent to prison by Exmouth magistrates for receiving goods stolen by his wife, and the wife was put on probation for stealing.

There is no difficulty in such a case because of the relationship between husband and wife, it having been held in *R.* v. *McAthey* (1862) Le. and Ca. 250, that a husband may be convicted of knowingly receiving property stolen by his wife. Where the husband steals and the wife receives the position is not quite so clear. It was held in *R.* v. *Brooks* (1853) Dears C.C. 184, that a wife could not be convicted of receiving property stolen by her husband. At that time there was a presumption of law that the offence, committed in his presence, was committed under his coercion and she was entitled to be acquitted. That presumption was abolished by s. 47 of the Criminal Justice Act, 1925. It still remains a defence for the wife to prove that it was committed in his presence and under his coercion. It would seem therefore, that a wife can be convicted of receiving goods stolen by her husband, but that the defence provided by s. 47 of the Criminal Justice Act, 1925, may be open to her.

Indecent Assaults on Boys as Cruelty to Wife

Acts of indecency with third parties, which affect the wife's health, may constitute cruelty by the husband, *Ivens* v. *Ivens* [1954] 3 All E.R. 446; *Cooper* v. *Cooper* [1954] 3 All E.R. 415; 119 J.P. 1. A course of conduct which raises the presumption that the husband intended to make his wife disgusted with him, or to make her miserable, and which in fact injures her health, can certainly be treated as persistent cruelty.

Willmer, J., dealt with this aspect of cruelty in *Watson* v. *Watson* (*The Times*, April 11). The respondent husband had been a clerk in Holy Orders. The cruelty alleged consisted of indecent assaults on boys, and it came to light less than a month before the child of the marriage was born. He was convicted. The disclosure came as a great shock to the wife and her ill-health was probably directly attributable to this. The learned Judge pointed out that the husband, an educated man, must have realized all this if he had applied his mind to it. Having in view the nature and social standing of the parties, and their position in a small town, together with the wife's ill-health, the learned Judge said he could only come to the conclusion that the husband, whether he deliberately intended it or not, had been extremely cruel to her. Accordingly he granted her a decree.

In the leading case of *Jamieson* v. *Jamieson* [1952] 1 All E.R. 875, it was laid down by the House of Lords that in cases of alleged cruelty the intention need not be proved by direct evidence. It can be inferred from the whole facts and atmosphere disclosed by the evidence. The respondent's acts must be judged in relation to the surrounding circumstances which include the physical or mental condition and the capacity for endurance or the peculiar susceptibility of the innocent spouse, the intention of the offending spouse, and the offender's knowledge of the actual or probable effect of his conduct on the other's health.

The Real Burden of Rates

A ratepayer with a fixed income must feel considerable alarm at the continuous rise in the amount demanded from him as rates: his position is particularly serious because each year a larger proportion of his total income must be remitted to the local authority. Those in this unhappy position are largely pensioners of various kinds who are suffering from the effects of inflation: either they have had no increases in pensions granted possibly many years ago, or if increases have been given the additions have been quite inadequate to counteract the continuous fall in the value of money. The income tax relief given to certain of such incomes by the Chancellor is therefore to be welcomed, and it is to be hoped that shortly there will be some amelioration of the lot of state old age pensioners.

These unfortunate citizens are, however, in a minority. The proportion of the national income spent by the central government has declined over the five years 1951 to 1955 from 32 *per cent.* to 27 *per cent.* and that spent by local authorities, excluding the part financed

by central government grants, has fallen slightly from 6.9 *per cent.* to 6.7 *per cent.* In terms of real incomes therefore a reduction of the tax burden has been effected over the quinquennium for most people: broadly national taxation has been reduced and rises in money incomes have more than taken care of rises in the rates.

While there is little doubt that rates will continue to increase the outlook for most of the ratepayers is not so gloomy as might appear, provided the country as a whole can continue to expand its production. The Economic Survey for 1957 informs us that in total personal incomes rose by about eight *per cent.* in 1956, the same proportion as in the previous year. Wages and salaries went up by about nine *per cent.*, rent dividends and interest by six *per cent.*, and the incomes of self-employed persons by less than two *per cent.* A rise of nine *per cent.* in pay absorbed almost painlessly the rate increases of 1955–56. The amount of savings is further evidence that the country as a whole is a long way above subsistence level. During 1956 the balance of personal savings rose to 10 *per cent.* of disposable personal income, a proportion considerably higher than in any previous year since the war.

So we have another demonstration of what has been demonstrated so often in the past: rates are a regressive and in certain respects an inequitable tax: the practical acknowledgment of this truth is a decision to rate practically no hereditaments at correct values. Domestic properties are valued on 1939 capital costs, commercial premises receive a 20 *per cent.* reduction, and industrial undertakings have their liability halved whilst agriculture has no liability at all. As Mr. Brooke said, so wonderfully exemplifying the British genius for understatement, "There are still some difficulties to be overcome in the rate system."

Beating "Baffle-Gab" in Berks.

Earlier this month 50 local government officers attended a three-day course on "Report and Letter Writing" organized by the Berkshire county council at Easthampstead Park, formerly home of the Marquess of Downshire and now a teachers' training college.

Besides officers from Berkshire, there were contingents from neighbouring local authorities, including the boroughs of Reading and Oxford, and the Bucks., Hants., Oxford and Surrey county councils.

In opening the course, Colonel Granville Walton, vice-chairman of the Berkshire county council, drew attention to the growing amount of written reports which a councillor of a large authority is expected to read. "Every day" he said, "large envelopes arrive at my house. This is one I received on a morning just before our Finance Estimates meeting. It weighs a pound and a quarter. We councillors are at the receiving end."

Colonel Walton, drawing on his military experience, pointed out the value of appreciating the situation. "Many of you," he said, "will know all about that: the great thing being that you have the objective before you. Another thing I feel is most useful is for councillors to have a recommendation of some sort given at the end of a report. I know that is rather a controversial point."

The course was directed by Mr. B. C. Brookes, M.A., Lecturer in the Presentation of Technical Information, University College, London, and Mr. J. N. Patterson, M.A., Education Department, Imperial Chemical Industries Limited. Mr. Brookes in his opening talk echoed the vice-chairman's words. In order that the course could be designed to meet the needs of local government and to give the lecturers the necessary background information, it was arranged that sets of council reports and documents should be forwarded to the lecturers. "I was soon crying for mercy" said Mr. Brookes. "My wife was upset and the neighbours were concerned at the huge parcels which came for me from the county council."

Much of the course consisted of practical exercises, and there were only four lectures given throughout the three days.

A royal example of "plain words" was provided for the students in a collection of reports through the ages staged by the Berks. Record Office. Included in the display is a draft of an instruction to the Earl of Inchiquin, commander of the expedition to Tangier in 1677. One of the corrections, believed to be in Charles II's own handwriting, amends the words "overtaken with drunkenness" to the single word "drunk."

Industry is increasingly realizing the value of good communications both inside the organization and with the public. It is heartening to find a local authority attempting to provide systematic instruction on a subject as important as this. We hope in a future issue to include a note of some of the principal points made.

Jurisdiction Exhausted

R. v. *Board of Control of Rampton Institution, ex parte Barker* (*The Times*, April 10), concerned the alleged illegal detention of a woman as a mental defective. The Divisional Court allowed the application for a writ of *habeas corpus*.

The real question before the court was whether the justices who had made an order under s. 8 of the Mental Deficiency Act, 1913, some eighteen years ago, had jurisdiction to make it. It appeared that in July, 1938, the justices had dealt with the girl, as she then was, as guilty of larceny and ordered her to be sent to an approved school. The justices had since died and the information before the Divisional Court was described as tenuous, no application having been made about the girl's detention until the present time. From the documents before the court it appeared that the justices ordered her to a remand home until an approved school was found for her. In September, however, application was made to commit her to a certified institution under the Mental Deficiency Act, 1913, and the order now in question was made.

Hilbery, J., who delivered the judgment of the Lord Chief Justice and himself, said that if the entry in the register made in July meant that the justices ordered her to be sent to an approved school, that exhausted their jurisdiction and fresh proceedings would be necessary in order to deal with her under the Mental Deficiency Act. The entry in the register was consistent with the making of an approved school order and with the intention of the justices to order her detention in the remand home, under s. 69 (2) of the Children and Young Persons Act, 1933, until a school could be found. The court came to the conclusion that this was what the justices had done, and that they had exhausted their jurisdiction in respect of the conviction of larceny. On the facts, it looked as though the girl had been sent to an approved school, and was there when the application was made in September, 1938, under s. 8 of the Mental Deficiency Act. Any application should then have been made to the Secretary of State under s. 9. The court did not pronounce upon the question whether the woman should or should not be detained as a mental defective. Stable, J., concurred.

Once an approved school order has been made and not appealed against it stands, and the justices have no power

to override it. All that the justices can do is, where necessary, to make an order or orders under s. 69 (2), *supra*, dealing with the custody of the child or young person until the approved school order can take effect. In other respects their jurisdiction is exhausted.

Taking and Riding Away a Bicycle

We are grateful to two readers who have written to us on this subject in connexion with our Note of the Week at 121 J.P.N. 187. From them we learn that in Gibraltar the enactment corresponding to s. 28 of the Road Traffic Act, 1930, provides that "every person who takes and drives away from any place *any vehicle or animal* without the consent of the owner thereof and without having other lawful authority shall be guilty of an offence." Coming nearer home the administrative county of Devon has a byelaw as follows:—"No person shall, without having either the consent of the owner or other lawful authority, take and ride away any bicycle left in any street or public place." There follows a proviso which follows closely the wording of the proviso in s. 28 (1) of the 1930 Act, and which prevents conviction when the court is satisfied that there was a reasonable belief by the defendant that he had lawful authority or that the owner would have consented. The maximum penalty on conviction under this byelaw is a fine of £5, and we are informed that there have been several prosecutions which have resulted in convictions for this offence.

The fact that the unlawful borrowing of a bicycle can be punished if it occurs in Devonshire is satisfactory, and it seems to emphasize the need for general legislation on the subject. Such borrowing is, we fear, common throughout the country, and it is not satisfactory that misconduct of this kind should be dealt with by local byelaws. We hope that further attention will be given to the matter.

A Planning Declaration

At p. 241, *ante*, we noticed a case where recourse to the High Court had been helpful to a planning authority, which was unable by any remedy short of an injunction to put an end to use of land for which planning permission had not been obtained. The decision in *Francis* v. *Yiewsley and West Drayton U.D.C.* [1957] 1 All E.R. 825, shows another aspect of proceedings in the High Court. In that case an enforcement notice had been served, intended to accord with s. 23 of the Town and Country Planning Act, 1947, reciting that the development complained of had been carried out without planning permission. This recital was incorrect, in that the occupier of the land had obtained planning permission on appeal from the Minister of Housing and Local Government; this permission had only been valid for six months, and the use thus permitted ought to have been then brought to an end, but it had not. In the circumstances of the case, the point looks very technical, but it sufficed. The occupier of the land did not appeal against the enforcement notice under s. 23 (4) of the Act of 1947; he simply continued using the land as before. The report states that the urban district council did not prosecute the occupier; presumably he thought it wiser not to wait for a further attack, and to carry war into the enemy's country. He applied for a declaratory judgment under Order 25, r. 5, to the effect that the enforcement notice was invalid. The learned Judge examined various other cases without finding one exactly in point, and then proceeded to grant the judgment asked for, upon a general principle. This general principle is that a person's ordinary rights of seeking any appropriate remedy before the courts must not be deemed to be ousted except by some express provision in an Act of Parliament. Section 24 of the Act of 1947 ousts certain of those rights, but does not preclude recourse to the High Court. The Act of 1947 is highly technical, and Lord Simonds had laid it down last year that, when an encroachment upon private rights occurs under that Act, it is the duty of the court to insist on strict and rigid adherence to formalities. Section 23 of the Act of 1947 requires that an enforcement notice shall set out the development which is alleged to have been carried out without the grant of permission, or alternatively any conditions of the grant of permission which have not been complied with. The urban district council could, it seems, have served a notice which would have been good upon the facts, but they served one which did not state the facts correctly. Nobody could have been deceived, because the occupier must have known quite well what was the complaint against him, but the council have had to pay the price of their mistake.

Corke's Meadow

From time to time the national press discovers with surprise an intractable problem, which is only too familiar in type to persons concerned with local government. One such is Corke's Meadow in the urban district of Chislehurst and Sidcup. This, it seems, comprises 11 acres let out in caravan sites, and the use began in 1930. This was before the planning powers became available which are now being used, as mentioned lately in some other notes in this column. The use was already existing before the Town and Country Planning Act, 1932, and before the enactment of s. 269 of the Public Health Act, 1936. There are said to be more than 100 families living in huts, caravans, and converted buses, among heaps of scrap metal and debris. There are said to be eight closets and one water tap. (*The Times* reporter, who ought to have known better, said there were eight "lavatories"—a genteelism which leaves it to be guessed whether there are even any water closets.) Each family pays 5*s*. a week. According to the reporter, the most the local authority can do is to keep the place under regular observation by inspectors. This statement seems to ignore the nuisance sections of the Public Health Act, 1936, including ss. 48 and 268, which existed in much the same form before that Act was passed, and would be apt for altering some of the worst features of the site.

We imagine, however, that the crux of the matter is re-housing. If the local authority used their powers to the full, the Meadow might be put out of use as a place for human habitation. Desirable as this would be, if the account in *The Times* be taken at face value, there would then be 100 families without accommodation. One occupant showed *The Times* correspondent a letter from the housing manager of the council, said to be only the last of a long series, stating that his case would be considered when suitable accommodation became available. Another family with four or five children had come to the Meadow two years ago, because two London council housing lists had been closed to them, and search had proved hopeless for privately owned accommodation for so large a family.

The case is in itself a small one by comparison with the thousands of persons unable to obtain homes in the large towns, but it swells the evidence to the effect that the housing problem is by no means solved.

DOGS ON ROADS

By PHILIP J. CONRAD, F.C.I.S., D.P.A.(LOND.), D.M.A.

The danger which can be caused by loose dogs on highways was noticed at 114 J.P.N. 291. At p. 388 of that volume figures were given for a county borough, when it was said that about one accident in five arose from this cause. The danger is now recognized by s. 15 of the Road Traffic Act, 1956, which was brought into operation with effect from January 1, 1957. Towards the end of December, 1956, the Ministry of Transport and Civil Aviation issued circular 731 drawing the attention of county borough and county district councils to the provisions of the section which conferred upon them power to make orders, subject to the Minister's confirmation, designating lengths of road in their areas on which it would be an offence to cause or permit a dog to be unless on a lead.

A "designated road" is a length of road specified by such an order. The circular emphasizes that each length of road to be included in an order must be separately specified; an order cannot be made specifying generally all roads or roads of a particular class within an area. On the question of what roads should be designated, the circular naturally states that it would not be right to lay down any predetermined principles which would guide the Minister in deciding whether or not to confirm an order, but it goes on to point out that the intention of Parliament was undoubtedly to reduce the frequency of road accidents on particular lengths of road, due to the presence of dogs on the carriageway. Apparently, no less than 2,626 such accidents resulted in injury in 1954, and 2,682 in 1955. The circular continues with the guarded view that it seems probable that orders should be confined to roads where the presence of dogs on the carriageway is likely to be so frequent as to be a persistent cause of accidents; that, as a general rule, orders would only be appropriate on streets in or near built-up areas which carry heavy volumes of traffic. It is a pre-requisite to obtaining ministerial confirmation of an order that the chief officer of police is consulted; upon this consultation he will undoubtedly take account of the relevant accident records. If his view is not in support of the order-making authority, they have little hope of securing the needful confirmation. According to press reports, the chief constable of one county has informed his standing joint committee that he considers there are no lengths of road within the county where, in his opinion, an order would be justified. In the face of such a statement, it would be necessary to provide the chief constable with some special and unassailable evidence justifying an order if he was to be converted to a contrary opinion in any single instance.

The offence created by s. 15 is made subject to such limitations or exceptions as may be specified in an order. This gives some scope for the exercise of discretion on the part of the order-making authority, subject to what is said later on this score. Specific provision is made that an order shall not apply to dogs proved to be kept for driving or tending sheep or cattle in the course of a trade or business, or to have been at the material time in use under proper control for sporting purposes. This exception, according to the circular, covers, for instance, dogs used to assist the shepherd or drover in driving or tending sheep or cattle along the road to or from the market or farm, and dogs such as foxhounds when used for organized hunting.

As to procedure, the provisions of s. 250 (3) to (8) of the Local Government Act, 1933, relating to the making of bye-laws are to apply to the making of these orders under s. 15. A model form of advertisement and a model form of order are attached to the circular as annex A and annex B respectively. Councils are asked to adhere to the model order as far as is practicable, but where, for any reason, it is desired to depart therefrom, it is stated that it will probably be convenient and save time if a draft of the proposed order is submitted for the Minister's prior consideration. The application for confirmation is to be sent to the Minister's Divisional Road Engineer, and details of the manner of the application are fully set out in the circular.

The Minister does not intend to prescribe a traffic sign under s. 48 of the Road Traffic Act, 1930, to indicate the existence of such orders, but in order to ensure that all persons in charge of dogs may be fully aware of their obligations the order-making authorities are recommended to consider the erection of suitable notices in appropriate places, summarizing the effect of the order. In exercising his power of confirmation or otherwise, the Minister is likely to pay particular attention to the proposals of the authority in this respect, and also to the extent to which it is expected that enforcement will be practicable.

This brings us to the last point of law concerned with s. 15, namely enforcement. Anybody is liable, on summary conviction, to a fine not exceeding £5 for an offence against an operative order made under the section. Enforcement should be easy in theory, as compared (to quote an instance to the contrary) with the speed limit, because the simple method (which may not always be as easy as it seems) is to ascertain from the collar of the unleashed dog the name and address of the owner, which is required to be shown thereon. There is no doubt that order-making authorities will be obliged to look to the police for assistance in securing effective enforcement and the chief officer of police, in considering proposed orders, will have this point well in mind, in relation to the manpower position of the constabulary, in the locality concerned. County borough and county district councils are specifically empowered to institute proceedings for an offence. This question of enforcement has been a deterrent to the wider adoption of a byelaw prohibiting the fouling of footpaths by dogs, and the Home Office have consequently been unwilling to confirm such a byelaw unless positive steps towards enforcement were contemplated. Undoubtedly, the Minister of Transport and Civil Aviation will take the same view. It therefore becomes important that, police establishment permitting, police co-operation should be readily forthcoming. Presumably, there will be less difficulty in this respect where the chief officer of police is in agreement that the order is desirable in order to lessen the number of accidents on the length of road in question, many of which have in the past been due to dogs running about on or near the carriageway.

Turning to the more practical side of this topic and to some of the administrative considerations that may arise, the fact has to be faced that there are many situations where dogs roaming about at random on a road or roadside can represent a real hazard to drivers and, indirectly, to pedestrians as well. This new statutory provision should, therefore, find an important place on the agenda of road safety committees everywhere.

This thought prompts reference to an incidental administrative point affecting rural district councils. They are order-making authorities, but they are not responsible for general highways or road safety functions which devolve, in rural districts, on county councils. Some liaison will, therefore, be desirable between the county road safety committees and the rural district councils in ensuring that, in the interests of road safety, orders are made wherever necessary.

Similarly, many rural district councils will consult with (and, in any case, will probably hear from) their parish councils as to stretches of roads, particularly trunk routes passing directly through a village, where unleashed dogs prove a special menace. The absence of a speed limit should strengthen the case for action in such cases. On a function of this kind, who could better the advice of a parish council or meeting who have a first-hand and intimate knowledge of all aspects of village life ?

Two obvious but important considerations need to be borne in mind. First, account must be taken of the volume of summer holiday traffic, especially on busy trunk routes to the coastal resorts. Secondly, local councils will not only think about actual accidents, but also the near-accidents which, though not recorded, are almost as important. They might, but for some feature of luck or other circumstance, have been on the official accident list.

Section 54 of the Act of 1956, dealing with interpretation, provides that for the purposes of the Act " road " means any highway and any other road to which the public has access.

There is a human angle to this topic, revealed by a circular letter addressed to local newspapers, with a view to publication in the editor's correspondence column, from the Royal Society for the Prevention of Cruelty to Animals in which the chief secretary states that since this new statutory provision was announced, there has been a marked increase in the number of dogs brought to the Society's clinics for humane destruction. He goes on to say that the extra care that would be required if many roads were designated should not tempt the true dog lover to sacrifice his pet rather than accept the added responsibility now imposed by the law.

It seems incredible that anybody would part with his pet on these grounds without first making some inquiries as to how many roads the local authority tentatively plan to put under control by making the necessary order(s). Nevertheless, the Society's appeal suggests that, in order to avoid public misunderstanding, the press should be specifically invited, where a local authority decide to take no action, to draw attention to this fact. When there is a proposal to designate a road(s), the position could be made clear to readers, with a reminder of the public right of objection to publicized draft orders.

BREACH OF PROBATION

[CONTRIBUTED]

In *R.* v. *Havant Justices, ex parte Jacobs* [1957] 1 All E.R. 475, a young woman was convicted of larceny and placed on probation for three years. Inserted in the probation order was a condition of residence in a hostel. Within three months she committed a breach of the order and was taken before the supervizing court. She was given an absolute discharge for the breach and the order was amended by substituting residence in an approved school for residence in a hostel. Before three more months had passed the young lady was before the supervizing court again (a second supervizing court this time) for breach of the order. This court decided to deal with her for the original offence and made a new probation order for three years. A month later she was before the court for breach of the new order and this time she was committed to quarter sessions under s. 20 of the Criminal Justice Act, 1948, where she was sentenced to borstal training.

The issue before the Divisional Court was whether the second probation order was properly made in view of the fact that it subjected the defendant to a period of probation exceeding three years for one offence. It was held that a second probation order could be made in such circumstances.

There were three interesting factors in this case which were not, apparently, argued before the Divisional Court. First, an absolute discharge was given for breach of a probation order. Secondly, residence in an approved school was made a condition of the order. Thirdly, a sentence of borstal training was passed after the defendant had been dealt with for the original offence.

The provisions relating to absolute discharge are contained in s. 7 of the Criminal Justice Act, 1948. Subsection (1) reads as follows:

" Where a court by or before whom a person is convicted of an offence . . . is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging him absolutely . . ."

The rest of the section deals with conditional discharge.

It will be noticed that an absolute discharge can only be given where a person is convicted of an offence. Is breach of a probation order an offence ? Section 7 (5) of the Act would appear to suggest that it is not, for it provides:

" A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction."

Further, in *Horsfield* v. *Brown* (1931) 96 J.P. 123, Macnaghten, J., said, " The Act (Criminal Justice Act, 1925), it is to be observed, is a statute that deals with the administration of criminal justice to the exclusion of any other subject, and in such a statute the word ' offence ' would seem to import an act or omission punishable under the criminal law."

" Offence " is defined in the Prevention of Crimes Act, 1871, as " any act or omission which is . . . punishable on indictment or on summary conviction."

In view of the wording of s. 7 (5) of the Act referred to above there would seem to be no doubt that a fine imposed for breach of probation is not a fine imposed on conviction from which it would follow that a breach of probation is not an offence.

Another matter which the court must consider before granting an absolute discharge is the appropriateness of probation. Where a person is brought before the court for breach of probation a probation order is already in force. By dealing with the defendant in a way which means that the order will continue to remain in force it could hardly be said that a probation order was not appropriate.

Taking these two points together, then, it would seem that an absolute discharge should not be granted for a breach of a requirement of a probation order. However, the matter has been before the Divisional Court and although the Lord Chief Justice stated all the facts in his judgment he did not comment upon this particular decision. There was no reason why he should have done, and it is unlikely that the point was raised in argument. It is almost a certainty that no defendant will object to being given an absolute discharge in such circumstances and the point is, perhaps, an academic one —except to clerks who are asked by their justices whether it can be done.

The power to commit to an approved school can only be exercised when a child or young person is found guilty of an offence punishable in the case of an adult with imprisonment (s. 57, Children and Young Persons Act, 1933). In the case of *R.* v. *Havant Justices*, the young woman was 19 when she was convicted and so she could not be committed to an approved school. But by s. 3 (3) of the Criminal Justice Act, 1948, a probation order may include such requirements as the court considers necessary. Paragraph 3 of sch. 1 to that Act provides that a probation order may be amended by inserting any requirement which could be included in the order if it were then being made in accordance with ss. 3 and 4 of the Act. Consequently the consent of the defendant is required when a condition is inserted on amendment just as it would be if the condition was being inserted when the order was being made.

However unusual it may seem, there appears to be no legal reason why a condition of residence in an approved school should not be made the condition of a probation order. It is, of course, assumed that the school concerned agrees to accept the probationer as a resident. But should this condition be put to the defendant after he has attained the age of 19 ?

It is provided by s. 71 (2) of the Children and Young Persons Act, 1933, that an approved school order is authority for the detention of a young person of 16 or over in an approved school until he attains the age of 19.

Only in the case of absconders and persons guilty of serious misconduct can detention after that age take place, the maximum age then being 19½.

There is nothing in the decision of *R.* v. *Havant Justices* to support the contention that a person of 16 who is put on probation can be sent to an approved school if he is brought before the court for breach of the order after he has attained the age of 17. For s. 6 (3) of the Criminal Justice Act authorizes a court to deal with the probationer " in any manner in which the court could deal with him if it had just convicted him of that offence." If he had just been convicted he would have been an adult and not a juvenile.

Before a court can make a probation order in respect of a young person or an adult the defendant must consent. His consent must also be obtained before any condition can be inserted in the order. If his consent is refused the court will have no option but to adopt some other course.

If a person aged 19 refuses to consent to a probation order the alternative may well be imprisonment or borstal. Consequently he gives his consent with the knowledge that more serious action may be taken if he refuses it. He is very likely to decide that residence in an approved school is better than a possible sentence of imprisonment or borstal training. But is it right that a court should seek to impose a condition in a probation order which is rather like passing a sentence which it has no power to inflict ? It may be submitted that it is not, however technically correct it may be.

The circumstances under which the young woman consented to a condition of residence in an approved school in the case of *R. v. Havant Justices* are not known and therefore cannot be commented upon. Having regard to the fact that the condition was inserted by a metropolitan magistrate and that the case has been before the Divisional Court, however, no possible criticism can be levelled at that decision.

Nevertheless, it is interesting to speculate whether there is any limit to the powers of the court under s. 3 (3) of the 1948 Act.

Section 6 (3) of that Act provides that where a court is satisfied that a probationer has failed to comply with any of the requirements of a probation order it may either deal with him for the breach or deal with him for the offence in respect of which the probation order was made. In *R.* v. *Havant Justices* it has been decided that the court, when sentencing the probationer in respect of the original offence, may make a further probation order even if the total period of probation will exceed three years. But does the court still have the power to sentence for the original offence if a breach of the second probation order is committed ?

That, in fact, is what was done in that case. Once again, however, the particular point was not, apparently, argued before the Divisional Court. Lord Goddard refers to it in his summary of the facts and again, in passing, in his judgment. An absence of adverse comment can imply judicial approval, but does not necessarily do so.

Referring again to the section it is seen that the court can deal with the probationer for the offence in respect of which the order was made. Since the second probation order, like the first, is made in respect of the original offence, it can be argued that the court can sentence again in respect of that offence.

But it can also be argued that once a probationer has been dealt with for the original offence by a further period of probation in pursuance of s. 6 (3) the power contained in that section is exhausted and cannot again be invoked.

As the Divisional Court did not decide the point there can still be said to be some doubt in the matter. However, if the latter view is preferred, it will be held despite the possible implied approval of the Divisional Court of the former.

C.T.L.

ADDITIONS TO COMMISSIONS

BATH CITY

Mrs. Florence Elizabeth Coltart, 42, Eastfield Avenue, Weston, Bath.

Miss Dorothy Alice Maud Harper, Middlehill House, Box, nr. Bath.

Basil Henry Sheldon, Heron Lodge, Bathwick Hill, Bath.

Arthur Leech-Wilkinson, St. Stephen's Lodge, Lansdown Grove, Bath.

WARWICK COUNTY

Miss Helen Paterson, Stoneydelph Farm, nr. Tamworth.

Kenneth Leslie Smith, Manor Farm, Walcot, Haselor, Alcestor.

Major Richard Christopher Warlow-Harry, M.C., Westfields, Moreton Morrell, nr. Warwick.

Michael Henry Warriner, M.B.E., Weston Park, Shipston-on-Stour.

WESTMORLAND COUNTY

John William Hunter, Church Gate, Kirkby Thore, Penrith.

WOLVERHAMPTON BOROUGH

Phillip Fitzgerald Mander, Chestnut House, Albrighton, nr. Wolverhampton.

Frederick John Tuck, 133, Low Hill Crescent, Bushbury, Wolverhampton.

STORM IN A DUSTBIN

In *Town and Country Magazine* for the London area on March 26, the B.B.C. told of a dispute which had blown up in the borough of Maldon. The story was given in some detail, with recorded conversations between the B.B.C.'s reporter and opponents of the council, but it is fair to say that nothing was recorded from the council's side. The council, it is said, have passed a resolution coming into effect on April 1, purporting to require occupiers to put out dustbins in the street on the day when the scavengers are due to call. Householders who by reason of age or infirmity are unable to put the bin outside are to be allowed to sign a form asking for exemption from the council's requirements; the scavengers will as hitherto go upon the exempted premises to fetch the bins. On the council's side it is claimed that some £2,000 a year will be saved. For the opposition it is, apart from the complaint of hardship to some persons who might not receive exemption, alleged that there will be a danger of nuisance if bins are placed upon the pavement of a shopping street and not cleared properly, and that the unsightliness of this practice will make against the town as a holiday resort. The last two objections may have been overstated. The council could insist that bins be covered before being placed outside the premises. The collections would take place more rapidly than when the scavengers have to enter private premises, and the practice of leaving bins, full or empty, on the pavement is unfortunately so common in other towns that we do not think visitors will be deterred from going to Maldon. So far, then, our sympathies are rather with the council. It is widely known that a large part of the cost of collecting house refuse, which has been going up and up all over the country, is accounted for by wages paid to men for walking from the front gate to the side or even to the back yard of a suburban dwelling, or in some cases from a back access street into a back garden. Even in a small town, we can well believe that the potential saving of £2,000 is within the mark.

What interests us, however, is a different aspect of the dispute. It is unsafe in technical matters to rely upon a newspaper account or a popular broadcast, but taking the story at face value we are puzzled by the reference to a resolution of the council, and the impression apparently entertained both by the council and by the opposition that the resolution will be binding upon persons who do not secure exemption.

Unless there is some provision in a local Act, such as exists in the City of London but is elsewhere unlikely, the council's resolution is no more than a request with which, reasonable up to a point as it may be, no occupier is obliged to comply. We say "up to a point" because the person who placed a dustbin on the highway might be exposed to an action for damages if somebody fell over it, and a request from the council that he would do so, or even a resolution by the council, would be no protection to him. What the council have power to do by virtue of s. 72 of the Public Health Act, 1936, is to make a byelaw (which has no effect until confirmed by the Minister of Housing and Local Government) requiring the occupier of any premises to place refuse which is to be removed by the council in a dustbin, and to cause the dustbin to be placed in a position on his premises which is conveniently accessible from the nearest street, so as to facilitate removal.

Applying this to several types of ordinary premises, one finds, for example, that the occupier of a suburban house with a small piece of front garden or a drive in to his garage can be required by the byelaw to put the dustbin in the front garden or the carriage drive, on the day when the scavenger is due to call.

The occupier of the terrace house with no side access can by the byelaw be required to place the bin on the paved yard in front of the house if there is one, or on the front doorstep or other place not forming part of the street if there is any such recessed place where the bin can stand. This applies equally to houses and to shops, which may have a strip of paving of their own or a recessed front doorway of sufficient size.

A moot point still exists, where the house or shop abuts directly on the street with no piece of land of its own on which a bin can stand. It is possible that the occupier of such premises has a right to place a dustbin on the footway a reasonable time before the scavenger is due to call, analogous with the right of having a vehicle stand outside his premises for loading and unloading goods, which was demonstrated in rather an extreme form in *A.-G.* v. *Smith (W. H.) & Son* (1910) 74 J.P. 313. It seems certain that he has no right to leave it there for more than a short and reasonable period of time. It would, for example, be an unreasonable and therefore illegal obstruction to put it out at the close of business hours and leave it on the highway in hours of darkness, to be emptied in the morning. Moreover, the occupier of premises who puts a dustbin on the highway does so at his own risk, and (as we have stated above) he cannot shelter himself behind a request or resolution of the council if legal proceedings are taken by a person who has been injured by his doing so. The council have no power to authorize an obstruction of the highway. In speaking above of the requirements which can be imposed by a local authority in order to facilitate the work of collection, we have been careful to state, in regard to each such requirement, that it can only be imposed by a byelaw duly confirmed after compliance with the statutory formalities. That is to say, even requirements lawful in themselves cannot be imposed by resolution of the council.

Would it be possible then for a local authority to make a byelaw requiring the occupier of premises to place his dustbin on the highway, if there was no position on his premises where it could stand and be conveniently accessible to the scavengers? The practical answer to this question is that for more than 50 years the confirming authorities for provincial byelaws on this subject, which before the Public Health Act, 1936, were made under s. 26 of the Public Health Acts Amendment Act, 1890, have refused to confirm a byelaw purporting to require or to authorize the placing of dustbins elsewhere than on the premises to which they belonged, and that the model byelaw for use under s. 72 (3) of the Act of 1936, though modified from time to time, has remained the same in substance. The statutory power is for imposing on the occupiers of premises duties in connexion with the removal of house refuse, in order to facilitate the work of collection. For this purpose the council are empowered, where the model byelaw is in force, to serve upon the occupier of premises a notice specifying the day and hour when they will remove house refuse, and thereupon the occupier must on that day and before the specified hour place refuse of which he does not himself intend to dispose in a bin in such a position on the premises that it will be conveniently

accessible from the nearest street used as a means of access for the purpose. It is left to the occupier to choose the exact position so long as this will be conveniently accessible, except that it must be in a position (if possible) where the refuse does not have to be carried through a dwelling house by the council's men. The practical result is that, on the day when the refuse is to be collected, the bin containing it must be placed in the front garden, or carriage-drive if any. It might be placed upon the doorstep where there was no better position available, but the byelaw does not empower the council to ask that the bin shall be placed upon the highway. If the occupier does put it there, he still does so at his own risk.

The present model byelaw dates, in substance, from the case of *Wandsworth Borough Council* v. *Baines* (1906) 70 J.P. 124. Before that case the London county council had made a byelaw which had been confirmed by the Local Government Board, but did not agree with any then existing model. Their byelaw was unusual, and the fact that the Local Government Board confirmed it is a little surprising, in that it purported to enable borough councils in London to prescribe the position where dustbins were to be placed, which not only could, if the borough council so prescribed, be in an accessible position on the premises (as under the model byelaw) but might be on the kerbstone or outer edge of the footway. We discussed the case more fully than we now intend to do, thirty years ago almost to the day, at 91 J.P.N. 263, but it still possesses interest not merely in its legal aspect but as a reminder of a way of life now largely passed. Mr. John William Baines was a member of the Chancery bar, living in a house in its own grounds at Wandsworth. The metropolitan borough council served on him and other householders a notice, requiring them to place dustbins on the outer edge of the footway outside their houses.

Mr. Baines's house stood back some 40 *ft.* from the road ; his dustbin would no doubt be kept at the back or side, say a further 20 *ft.* To collect this, therefore, the scavengers would have to walk some 40 *yds.*, and twice that distance if they took the empty bin all the way back. The 40 *yds.* multiplied by the number of similar houses in the better residential areas of Wandsworth would have represented quite a big sum in wages, even 50 years ago. The Wandsworth council, like the town council of Maldon in the case we are now considering, could fairly claim sympathy for an endeavour to save public money by cutting down the time which their men would have to walk on private land. If they had been content to serve on Mr. Baines and others a notice requiring that the bins should be brought up nearer to the entrance gate, they would have been in a stronger position—it would have been open to them to contend that the back or side of the premises was not conveniently accessible, though this would be partly a question of degree, depending on the size of the front garden.

As it was, they asked too much in the notice served upon the householders. Mr. Baines, as appeared in course of the proceedings which ensued, employed female servants only, and did not think it fitting to ask them to carry out a full bin into the street. Nor did he feel disposed to do so himself before he left for Lincoln's Inn. He did, however, have it put in a place upon his premises which was accessible to the scavengers. The borough council retaliated by refusing to collect his refuse, whereupon he prosecuted them under s. 16 (2) of the Public Health (London) Act, 1891. The magistrates convicted, and the borough council took the case to the Divisional Court. It is easy to understand that from their point of view the issue was important, for a good deal of money was involved. The decision of the Court was reported in most of the series of reports then current, but unfortunately there are discrepancies which leave some doubt about the reasons for the decision. It is, however, safe to say that the Divisional Court held it to be illegal to place bins on the highway for any longer time than was necessary for the actual work of emptying them; it is not quite clear whether they can lawfully be left even for so long as this—we went into this aspect of the problem in our earlier article. At the present day when other and more serious obstructions of the highway have become commonplace, with which neither highway authorities nor police feel themselves strong enough to interfere, it might seem excessive to press a strictly legal argument against the placing of dustbins on the footway for a short time, but it is worth bearing in mind the circumstances in which Mr. Baines won his case against the borough council.

Under s. 72 (2) of the Public Health Act, 1936, the remedy of the householder at Maldon or elsewhere, whose refuse the council decline to take away unless he puts it on the highway, will not technically be to prosecute the council, as it was under the old London Act (now brought into line with the provincial law), but to proceed against them for a penalty of 5*s.* a day recoverable as a civil debt. The remedy is there.

ANNUAL REPORT OF THE CHIEF MEDICAL OFFICER OF THE MINISTRY OF HEALTH

The report of the chief medical officer on the State of the Public Health, for the year ended December 31, 1955, was published recently as the second part of the annual report of the Ministry of Health. In an introduction by the Minister he points out that 1955 as a year had many favourable features, which directly or indirectly contributed to the public health. A somewhat late, but dry and sunny summer provided abundant opportunities for recreation and relaxation. Food was plentiful and in good choice. Work was to be had by all capable of undertaking it. The difficulties which accompany indifferent housing conditions continued to be relieved by the progress of building.

The estimated home population of England and Wales at the middle of 1955 was 44,441,000. This is 167,000 more than in 1954. The excess of females over males was 1,663,000. Twenty-three *per cent.* of the population were under 15 ; 66 *per cent.* between 15 and 64; and 11 *per cent.* aged 65 or over. In 1901 the corresponding proportions were 32, 63 and five *per cent.* The expectation of life at birth in 1955 was 68 years for males and 73 years for females. In 1901–10 it was 49 and 52 years respectively. But the expectation of life at 65 has increased in the same period by only one year for males and three for females, the figure for 1955 being 12 and 15 respectively. Thus although there has been a considerable increase in the expectation of life of the new-born child—and this is reflected in the increasing proportion of persons aged 65 and over—there has been no very great lengthening in the expectation of life of people who attain 65 years.

The statistics as to the death rate show that in the under 15 age group England and Wales is in a particularly favourable position with a death rate in 1953 of 2·8 per 1,000 for males and 2·2 for females. Only Sweden has a lower rate for males (2·2) and females (1·7). Israel and Japan have death rates in this age group of more than twice those of England and Wales. In the older age groups the position of this country is less satisfactory. In males over 65 the rate is 80 per 1,000, that for Scotland 81 and for France 87. All other countries for which information is available have lower rates. For both sexes in the 15–44 age group this country is among those countries with low death rates. In the 45–64 age group our position is intermediate.

In the chapter on epidemiology it is stated that for the second successive year there has been no case of smallpox in England and Wales. The number of persons primarily vaccinated was more than in 1954 and the number of re-vaccinations was fewer.

The growth of the National Blood Transfusion Service is shown by the fact that in 1955 just over three and a half times as much blood was issued to hospitals as in 1946. The increase over 1954 was some 45,000 bottles, the largest increase since 1952. It is suggested that the men and women who form the donor panels, on which the whole service depends, tend sometimes to be forgotten because of the anonymity which cloaks their activities. Their constant and keen support cannot be praised too highly. The satisfactory recruitment of new donors in 1955 was due not only to the willing assistance of various organizations but also, it is stated in the report, to the sense of social responsibility and the desire to help the sick of those who became donors.

The report contains a brief, but interesting record, of the developments in general public health since the founding of the Society of Medical Officers of Health in 1956. As to the future it is urged that the health officer must seek to enlarge his understanding of the meaning of health if the claim that he has evolved from the medical sanitarian of 100 years ago to the medical sociologist of today is to be justified.

Tuberculosis and Cancer

The striking change in the incidence of tuberculosis has resulted in considerable optimism that present methods of treatment and preventing its spread are such that, within the next few decades, the disease may be effectively brought under control. But tuberculosis still ranks as by far the chief group of infectious diseases, especially in the most productive years of life. In 1955 it caused 67 *per cent.* of all deaths due to infection, and no less than 78 *per cent.* of those in the age group 15 to 39 years. The need for a more extensive investigation of contacts is emphasized as in 1955 of every case diagnosed, an average of only 4·3 contacts were examined. Deaths from all forms of tuberculosis numbered 6,492, giving a rate of 146 per million living. This is a decline of 18 *per cent.* on the previous year and of 67 *per cent.* in the past six years. There was a considerable improvement in the position as to institutional accommodation. In several regions there were no waiting lists and the total waiting list has been reduced by 86 *per cent.* in the last five years.

The story about cancer is still depressing. It is pointed out, however, in the introduction by the Minister that the professional and the public attitude to cancer is so much in danger of becoming one of helpless resignation in face of the apparent inevitability of the disease that it is salutary to be reminded by the investigations mentioned in the report that certain cancers have been prevented and are now rarities. It is suggested that it is, therefore, not too optimistic to hope that modern research may in time reveal the way to the prevention of the cancers which remain. Among those, cancer of the lung is one which is causing most anxiety. It is stated that there can be little doubt that this condition is on the increase and has probably been increasing since 1920. Two conditions seem to be associated with its occurence—air pollution and excessive cigarette smoking—though other factors at present unknown may also be operative. It is suggested that the practice of those countries abroad which do not countenance smoking in theatres, cinemas or even in public transport is one that deserves at least study, if not imitation.

Mental Health

At the end of 1955 there were 150,572 patients in hospitals approved under the Lunacy and Mental Treatment Acts. Special consideration is given in the report to the greater facilities available for the treatment of chronic patients. There is also the beginning of a new outlook towards the relationship between the different members of the staff and between staff and patients.

Freedom, occupation, rehabilitation, and good personal relationships are all part of modern treatment which aims to build up self-respect and self-discipline in patients and staff alike. It is suggested that if such a partnership can be achieved the staff will feel less need for autocratic and restrictive rules, and the patient will be less prone to outbursts of hostility. In the modern mental hospital much depends on the aid given by workers other than doctors and nurses; and in the task of rehabilitation after discharge, the help of voluntary organizations is invaluable. A detailed account is included in the report of the kind of help which is given by the Mental After-Care Association, the Order of St. John, the British Red Cross Society, the Women's Voluntary Services, the League of Friends and other organizations.

On future hospital planning it is pointed out that much needs to be done particularly in avoiding the segregation of patients from the community which has left an impression on the public that treatment of mental illness requires complete withdrawal from normal contacts. It is increasingly recognized that domiciliary care, out-patient and day hospital services, combined with proper care for the aged outside mental hospitals, can greatly reduce the need for admission to hospital, and that there is advantage in reducing the shock of transition from home to in-patient care by having the hospital, wherever possible, close to the community to be served. Details are given of schemes in operation at Oldham and Nottingham for the intergration of community and hospital services and of the day hospitals which have been provided in nine regions. It is to be hoped that they will soon be available in the other five regions. It seems to the Ministry that the number of patients in a day hospital should not exceed 30 and that the services should fall into one of the four following groups (1) Day centres which would provide the same sort of services for the mentally ill as occupation centres do for the mentally defective. (2) Day hospitals which would be ancilliary to a mental hospital or an out-patient unit providing treatment for all types of mental illness. (3) Geriatric day hospitals for old people and (4) Comprehensive day hospitals accepting groups of short and long-stay day patients and offering complete out-patient service. To this might be added a night hospital.

On mental deficiency it is noted that the number of patients under care in institutions and homes increased by 671 during the year to a total of 61,539. Those under guardianships or statutory supervision amounted to 62,392. The arrangements for placing defectives in employment are explained in detail and there is special reference to the work of the disablement resettlement officers of the Ministry of Labour in this connexion.

The question is raised, however, as to whether the community cannot deal itself with a considerable number of mental defectives so that they may never need to go to hospital. It is suggested that many patients could manage satisfactorily if given a good home and good conditions of employment along with some kindly

advice and help. In this connexion reference is made to hostels which have been established by the London county council for girls placed under guardianship and by the Leeds county borough council for children who need care temporarily because of a domestic emergency in their homes or to give their parents a rest.

Accidents in the home and in residental institutions

One of the most important sections of the annual report always refers to the need for the prevention of accidents in the home and in residential establishments. It is very unsatisfactory to learn that the numbers of these fatalities continue to increase. More than four-fifths of the deaths occur in children under five years and in elderly people of 65 years and over. Seventy-five *per cent.* occur among people of 65 and over, and 57 *per cent.* among those of 75 years and over. The main cause of this high death rate is falls. In connexion with accidents by burning attention is drawn to a paper prepared by the Joint Fire Research Organization of the Department of Scientific and Industrial Research. It is surprising that in spite of the provisions in the Heating Appliances (Fireguards) Act, 1952, fatalities from clothing catching fire have not decreased. It is urged therefore that it is important that all fires should be guarded, especially when children or old people are at home. There were also a number of fatalities to old people due to coal gas poisoning. In order to draw attention to the obvious risks to old people, with a diminishing sense of smell and hearing, a technical committee of the Gas Council's Watson House Research Council is enlisting the help of the various social organizations concerned with the problems of old age. The Royal Society for the Prevention of Accidents realize the importance of local influence in the prevention of home accidents. It has encouraged the setting up of 70 home safety committees in England and Wales. In addition, the society has provided quarterly planning guides on home safety, complete with lecture notes for use by local lecturers and local authorities. The medical officer of health is usually a member of the local home safety committees and he can do a great deal to reduce the accident toll. But as explained in the report, in order to plan an accident prevention scheme in his area he must know about accidents which occur, and his results are made more effective if he has the co-operation of the local hospitals and the local general practitioners.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Lord Morton of Henryton, Lord Radcliffe, Lord Cohen, Lord Keith of Avonholm and Lord Evershed.)

MID-NORTHAMPTONSHIRE WATER BOARD *v.* LEE (VALUATION OFFICER)

February 25, 26, 27, 28, April 4, 1957

Rates—Assessment on profits basis—Water undertaking—Gross receipts from precepts on constituent authorities.

APPEAL from an order of the Court of Appeal, reported 120 J.P. 283.

A water board estimated that expenditure for the year ended March 31, 1952, would exceed revenue by £66,170, there being included in the estimates of expenditure £9,515, which it was anticipated would be required for loan charges in respect of capital expenditure on works not yet in beneficial occupation. Precepts were issued to the constituent authorities of the board for a total amount of £66,170, and this sum was received from them during the year. In fact, the amount required for loan charges was only £3,365. On the question whether, in arriving at the cumulo net annual value of the board for rating purposes on the basis of the accounts for that year, the receipts under precept, including the £3,365 actually spent on loan charges, should be treated as part of the profits of the board,

Held: the whole amount received in respect of the carrying on of the undertaking was to be regarded as receipts of the board as hypothetical tenants and the proportion of that amount calculated to belong to the hypothetical landlord was to be treated as rent out of which the landlord had to pay the loan charges in respect of both completed and uncompleted works.

Decision of the Court of Appeal *sub nom. Lee* (*Valuation Officer*) v. *Mid-Northamptonshire Water Board* (1956) 120 J.P. 283 affirmed.

Counsel: *Rowe, Q.C.,* and *Roots* for the appellant board; *Harvey, Q.C.,* and *P. R. E. Browne,* for the *valuation officer.*

Solicitors: *Sherwood & Co.,* for *C. E. Vivian Rowe,* Northampton; *Solicitor, Inland Revenue.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

REVIEWS

Jervis On Coroners. Ninth Edition. By W. B. Purchase, C.B.E., M.C., M.B., D.P.H., Barrister-at-Law, and H. W. Wollaston, Barrister-at-Law. London: Sweet & Maxwell, Ltd., 2 and 3, Chancery Lane, W.C.2. Price £4 4s. net.

The first edition of this standard work, published in 1829, was by the famous Sir John Jervis. The present edition, like the preceding one of 1946, is edited by Dr. Purchase, this time jointly with Mr. Wollaston. Like many another law book, it is interesting as well as instructive. The history of the ancient office of coroner goes back over 750 years, and although this is not given in great detail there are glimpses of it in various parts of the book.

Detailed rules prescribing the practice and procedure to be followed by coroners on certain matters were made for the first time in 1953, and these, the Coroners Rules, 1953, besides being referred to in various parts of the book, are printed in full with other statutory instruments in one of the nine appendices.

There is some criticism, in our opinion justifiable, of the power of the coroner to commit for trial for murder, manslaughter or infanticide. "The continuance of the power of the coroner's court to commit in these days when the apprehension and committal for trial of accused persons is regarded by most people as the province of the police and the magistrates' courts, is thought by many people to be anomalous. The Departmental Committee of 1935 recommended its abolition." In this chapter, which is devoted to committal for trial, the procedure is carefully explained and where it differs from procedure before magistrates this is pointed out.

The subject of the coroner's jury is fully treated, and when a jury is necessary and when not necessary is explained. All the duties of a coroner as well as the conditions of his appointment, tenure of office and emoluments are dealt with, and there is much useful information which is probably not available except in such a book, for example an appendix, with plans, relating to buildings with post-mortem facilities. Relevant forms and Home Office circulars are also included. Thus there is a complete statement of the law and practice, together with other matters of practical value. Needless to say, the work has been brought right up to date, with references to the Road Traffic Act, 1956, and there is a chapter on the Visiting Forces Act, showing its effect upon the duties of coroners.

Although this is a book for coroners it will prove its usefulness to members of the medical and legal professions who may be concerned with matters which may find their way into the coroner's court.

'Twas apparent from his opening,
He'd read his papers in the train.
It was clear to those instructing
He'd not be briefed again.

R.F.R.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MAGISTRATES' COURTS BILL

The Magistrates' Courts Bill, which has passed the Lords, has now had an unopposed Second Reading in the Commons and has been committed to a Standing Committee for detailed consideration.

Moving the Second Reading, the Joint Under-Secretary of State for the Home Department, Mr. J. E. S. Simon, said that the Bill related to procedure in magistrates' courts which tried 750,000 cases each year. He paid tribute to the lay magistrates who were not only the great unpaid but all too frequently the great unthanked. They wished to take the opportunity to express the thanks of the Legislature for the great work which was carried on day in and day out in courts of summary jurisdiction.

The way in which they could best show their gratitude was by ensuring, as far as they could, that the procedure of those courts was as efficient as they could make it, that while they maintained the traditional safeguards for any accused man before a court, nevertheless the courts should transact their business with such expedition and with such economy of time and effort and such adaptation to changed circumstances as they as a Legislature could ensure.

After outlining the provisions of the Bill, Mr. Simon said that it would facilitate the work of those important courts and prevent a great many people having to waste valuable time going through the useless exercise of proving what no-one sought to deny.

Mr. Charles Royle (Salford, W.) said that the Bill was not politically controversial and, in his view, the proposals were admirable. In spite of the fact that it was such a short Bill, its provisions would result in a minor revolution in the work of magistrates and of magistrates' courts.

He stressed that the Bill was not intended merely to deal with motoring offences. Many other offences would be decided under it. He was pleased that the Sharpe Committee had rejected the idea of fining on the spot, which was not in line with our ideas of justice. Such a system might bring about a feeling of hatred for the police which did not exist at present.

He recalled that in a previous Bill, they had altered the name applied to courts of summary jurisdiction from "police courts" to "magistrates' courts." Whenever he saw a reference in a newspaper to a "police court," he immediately wrote a letter to the editor and drew attention to his mistake. It should be stressed that the evidence of a policeman in the eyes of the justices had exactly the same weight as evidence given by anybody else. In the application of the Bill he trusted that there would be a growing sense of "the magistrates' court" rather than of "the police court." He expressed the hope that the Bill would not lead to chiefs of police ceasing to issue warnings to offenders, and to prosecute rather than give a warning.

He had a little doubt as to whether full consideration had been given to providing the magistrates with full opportunity of knowing the means of the defendant before they imposed a penalty. He also had doubts about the delivery of notifications, particularly of an adjournment; and he suggested that it would be more expeditious if they did without the reading of documents, which was superfluous.

Mr. Charles Doughty (Surrey, E.) disagreed with Mr. Royle regarding the reading of documents in court. He said that one of the fundamental principles of British justice, whether at a serious trial or at the trial of what they sometimes called a trivial offence, was that the proceedings should be public. If a particular type of offence was becoming too prevalent, even if only such an offence as riding a bicycle without lights, it was necessary that one should at least know who were the offenders, what the fines were and the reasons for them. Otherwise, it might appear that someone had been over-fined for what was said to be a trivial offence. But, when the full facts were heard and recorded, it might well become quite obvious why the defence took a certain course and why the magistrates acted as they did. Everything should be done in public and the press should, if necessary, be at liberty to report the happenings in their local courts.

Mr. Chuter Ede (South Shields) said that he regretted that the Bill had been introduced, although he thought that the Government had very little option but to introduce it. It was very important that any economy made in time should not be at the expense of justice. It was a necessary safeguard in the Bill, and he hoped that it would be scrupulously observed, that no sentence of imprisonment or detention should be passed in the absence of the defendant.

He hoped that magistrates would not adopt the procedure of considering matters in silence and then announcing the punishment they intended to inflict. The first thing to happen would be that when the chairman of the bench, after studying the documents and consulting his colleagues, said that there would be a fine of £5, somebody would say, "Well, of course, but for the fact that we know that the fellow who was charged is rather sweet on the learned chairman's grand-daughter, the fine would have been much heavier." One had to protect the bench on occasion, and it could only be done if all that was before the bench was made known in open court.

Mr. W. R. Rees-Davies (Isle of Thanet) welcomed the Bill which he said would save not only the police but the bench a great deal of time and would enable them to turn their attention to other more important cases. But there was a danger that the Bill would be a charter for pimps and prostitutes. In future, prostitutes would not have to go through the degrading spectacle, as they did at present. The prostitute would be dealt with by means of a summons in respect of which the maximum fine was 40*s*. It might be that in the not-far-distant future the House would consider whether those penalties should not be reviewed.

Mr. H. Hynd (Accrington) said that he was satisfied, from a magistrate's point of view, that adequate safeguards for defendants were provided throughout the Bill. He did not believe that it would have the harmful effects which Mr. Ede had suggested. After all, magistrates who had been appointed in recent times had the advantage of the new procedure of some tuition given through the Magistrates' Association.

Sir Frank Soskice (Newport) suggested that the Government should consider whether it was right to include offences such as careless driving within the scope of the Bill. The conviction for careless driving would be serious in the case of persons who made their living by driving vehicles.

He could think of a number of offences which might be within the scope of the Bill, to which there might be the danger about applying the new, summary method of process. There was the case of a man travelling with intent to avoid payment of a fare, an offence in which a dishonest purpose had to be established. If a person was convicted of it he had a serious black mark against his character for years. It might result in his losing his employment. Other offences of the character of malicious damage might involve an element of serious moral condemnation. It was at least open to question whether that type of rapid, summary process should be available in respect of those kinds of offence.

Replying to the debate, Mr. Simon said that the Government had decided that a circular should be sent to the courts and the police recommending that the new procedure should not be applied where a juvenile and an adult were charged jointly and tried in an adult court. He said that the Bill was not intended to derogate from the present system the police use of issuing warnings. Nor would it interfere with the present system whereby the court tempered the fine according to the means of the accused. The provisions in s. 31 of the Magistrates' Courts Act, 1952, would apply to cases under the Bill; that in fixing the amount of the fine, the magistrates' court should take into consideration, among other things, the means of the person on whom the fine was imposed, so far as they appeared or were known to the court.

He went on to say that the Lord Chancellor had indicated in the Lords that the Government had taken note of the criticisms of the procedure regarding the reading of documents and said that the Government would reconsider that procedure before the Committee stage.

Under the Bill, the court could not consider previous convictions until the court had decided to convict. It was only where a person was convicted that the evidence of previous convictions was admissible under that procedure, just as much as in the existing law.

He thought that prostitutes and pimps would not get the benefit of that procedure. They would normally be arrested and charged, and anyone who was arrested was outside the scope of the Bill. It was only on summons that the procedure applied, and not when proceedings were initiated by warrant. The procedure was at the initiative of the prosecution.

When Mr. Rees-Davies intervened to suggest that it would be far better if prostitutes were dealt with under the procedure, Mr. Simon said that that matter went far beyond the scope of the Bill and was under active investigation by the Wolfenden Committee.

COURT REPORTS BILL

Mr. R. M. Bell (Buckinghamshire, South) has given notice that he intends to seek leave under the Ten Minute rule to introduce a Bill to regulate reports of proceedings before examining magistrates. It is understood that the Bill will provide that proceedings of preliminary hearings by magistrates of indictable offences would be open but no reports would be permitted until the magistrates decided whether to send the case for trial. Reports of cases committed would be prohibited until the opening proceedings in the higher court. Mr. Bell expects to bring in the Bill on April 30.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Monday, April 8

MAGISTRATES' COURTS BILL—read 2a.

OCCUPIERS' LIABILITY BILL—read 3a.

Friday, April 12

LITTER BILL—read 2a.

CHEQUES (No. 2) BILL—read 2a.

NEW STREETS ACT, 1951 (AMENDMENT) BILL—read 3a.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

HIRE-PURCHASE LABEL

1. With reference to one of your Notes of the Week under the above heading on p. 156, *ante*, you may be interested to know that, before nationalization, it was the practice of some gas and electricity undertakings to attach to apparatus which they let out on hire or on hire-purchase a metal plate stating that the apparatus was the property of the undertaking, and this plate was affixed to the apparatus in such a manner that it could not be easily removed. This was the practice of the Portland council when they were the gas and electricity undertakers prior to nationalization.

DOG'S DELIGHT

2. In his article on p. 159, *ante*, Mr. J. E. Siddall states that the dog does not even involve the person in charge of him under the byelaws for good rule and government unless he is firmly attached by a lead. This is not so in Dorset, where the byelaw extends to dogs in the urban districts of Portland and Swanage the principle applied to motor vehicles, namely that it must at all times be in the charge of some person and that this person is the owner unless and until he shows that he placed it into the charge of some other person.

Yours faithfully,
C. H. MEYER,
Clerk.

Portland Urban District Council,
Council Offices,
Portland, Dorset.

[1. This is interesting, but we still think an enterprising and dishonest hirer would remove the plate. After all, when the article is on hire-purchase there must come a time when its removal is proper, so that even traces of the removal would not be conclusive.

2. Mr. Siddall had in mind, no doubt, the byelaw widely adopted in past years. The latest form issued from the Home Office has been put in force in Portland. It is more drastic, and presents its own difficulties to our mind.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I should like to comment upon the article appearing at p. 115, *ante*, under the title "The Use of Schools as Polling Stations." It seems to me a trivial reason, which is advanced by your writer for advancing the date of municipal elections from May to August, that schools are closed for two or three days in a year.

Your writer fails to appreciate that August is the only month in the year available generally to local government staffs to take their annual leave, and it is these staffs which are largely responsible for the conduct of these elections. If it is the intention that the election should be held at the end of the month this would result in a possible loss of leave to which officers were entitled, while if they came at the beginning of the month there would be the added complication of Bank Holiday.

In either event it is most probable at that time of year that the poll would be even lower than in May, and this would be a retrograde effect, when attempts are being made to increase the poll at local elections.

A better case could be made out for holding these elections in October, particularly in this part of the country, where a week's holiday is observed in all schools. This would both fulfil your contributor's desire to see that education is not interrupted and also ensure a proper poll.

Yours faithfully,
J. R. PUSSEY.

38 Westminster Crescent,
Hebburn,
Co. Durham.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

At p. 146, *ante*, it is stated that "Horses . . . have been brought into the section (i.e., s. 75 of the Diseases of Animals Act, 1950), by order of the Minister of Agriculture and Fisheries (S.I. 1952 No. 1236) but dogs and other carnivorous animals have not."

May I direct your attention to art. 12 of the Rabies Order, 1938, which extends the definition of the expression "animals" so as to comprise, *inter alia*, dogs and cats.

Yours faithfully,
H. RUTTER.

23 Heathdene Road,
Wallington,
Surrey.

[The Rabies Order, 1938, was made under different powers. There are others, earlier than the Act of 1950, which applied specific provisions to various animals and are still in force. They do not, however, extend the meaning of the word "animal" in the general definition section, now s. 84 of the Act of 1950, or affect the operation of s. 75.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I refer to P.P. 4 at p. 59, *ante*.

I think the question of housey-housey may be clarified even further. Sections 1 to 3 of the Small Lotteries and Gaming Act, 1956, have no connexion with s. 4 and the Home Office, in circ. 93/56, indicated that s. 4 imposed no duties on local authorities—therefore there is no registration. In consequence of correspondence with the Home Office regarding housey-housey, my view was confirmed, namely that s. 4 of the Act makes lawful certain kinds of gaming parties and, if a game of housey-housey can be conducted within the conditions of the section, it is not unlawful either under the law relating to gaming or under the law relating to betting and lotteries. In a nutshell, therefore, housey-housey as normally operated is undoubtedly a lottery but, if it is conducted in accordance with s. 4 (1), it is specifically deemed not to be unlawful by virtue of s. 4 (3). No registration with a local authority is necessary, ss. 1–3 being entirely divorced from s. 4.

Yours faithfully,
G. HARRISON,
Clerk of the Council.

Longbenton Urban District Council,
Council Offices, Forest Hall,
Newcastle-upon-Tyne, 12.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I was very interested to read P.P. 4 at p. 59, *ante,* and think you may be interested to know that, in response to an inquiry from the secretary of a registered club in this town on the question of the legality of the playing of "housey-housey" in the club, I gave the following reply:—

"With reference to your call upon me a few days ago when we discussed the question of the legality of playing 'housey-housey' at the . . . Club, I think it might be helpful if I set down my views for the guidance of yourself and your committee, on the distinct understanding that I am not in any way thereby committing chief constables elsewhere, or prejudicing any action of any successor of mine.

"Having said this I feel able to say that, provided you run the games within the limits set out below, I would not feel it my duty to take any action against the club in the present state of the law.

"The provisos are as follows:—

(1) The entertainment should be run for a predetermined number of games, each game to count as a 'heat.' The winner of each 'heat' would not receive a prize, but would be entitled to take part in the final 'heat,' in which only the 'heat' winners would take part. Prizes, as predetermined, would then be paid to, shall we say, the first, second and third winners of the final 'heat' or such other number as was agreed.
(2) The entry fee, which would entitle participation in all 'heats' except the final 'heat' must not amount to more than 5*s.*
(3) The total value of the prize money distributed in the final 'heat' must not exceed £20.
(4) The whole of the proceeds, less the cost of the prizes and the reasonable expenses incurred, must be applied for purposes other than for private gain."

On the question of "private gain," many clubs run "housey-housey" sessions in aid of such functions as children's parties, old folks' treats, and other matters affecting the welfare of the members.

Yours truly,
H. E. LEGG.

Chief Constable's Office,
Bootle, Lancs.

[We agree with both our correspondents. At the same time, we must point out that the purpose of our answer to the P.P. at p. 59, *ante,* was to emphasize that small gaming parties were exempt only if they were not run for private gain. Our correspondents would, we feel sure, agree that the facts in question *prima facie* disclosed a gaming party run for private gain.—*Ed., J.P. and L.G.R.*]

"O FOR A MUSE OF FIRE!"

Mixed feelings will be aroused by the announcement that a 19 year old member of Lord George Sanger's Circus is to enter Oxford University as an undergraduate in October, 1958. Ivanov Khan—to give him his professional stage-name—has been awarded an exhibition in modern languages at Jesus College; his ambition is to become an actor.

The reference to an "exhibition" is appropriate, since this dexterous performer has earned his reputation primarily as a fire-eater—not in the metaphorical sense of "a quarrelsome person," but in the literal meaning of the term. He swallows flaming brands and blows burning paraffin out of his mouth across the circus-ring. There has to be some restraint even upon such miraculous powers as these; Ivanov Khan is enjoined to limit the dimensions of his flames to 20 *ft.* in length, so as to avoid setting fire to the circus-tent. Incidentally, he is a non-smoker.

Commenting upon this news-item, *The Times* recalls that his last professional recollection of Oxford is of the rooms of a don at a college where he was being interviewed for a scholarship. When asked for an illustration of his magic powers, he produced a string of sausages from the don's own pocket. He did not get the scholarship.

A youth who is capable of igniting the torch of learning, as it were, by spontaneous combustion should go far in the academic world. Practised speakers in the Union must look to their laurels when an exhibitioner in modern languages adds to his accomplishments an eloquence so fiery that its ardent periods have to be delimited in feet. If he goes into politics, inflammatory speeches will become the order of the day. Hecklers will have to provide themselves with snuffers, and use them as Scrooge used his to extinguish the Spirit of Christmas Past. And political supporters, we may be sure, will lose no opportunity to pour oil on the troubled flames.

We are told nothing of Ivanov Khan's athletic prowess, but it seems likely that, as a safety-precaution, the organizers of any event in which he takes part will do well to choose a *venue* on the banks of the Isis. If he joins his College Eight, competitors will have to upholster their boats in asbestos-sheeting. Sports-fields will necessarily be equipped with hydrants, if the local vegetation is to be preserved from forest-fires, and running-tracks will be awkwardly encumbered with lengths of hose-piping.

These things, however, are not the worst. Consider what a revolution will be effected in the social life of a University where a visitor to your rooms, in the depths of winter, may at any moment pick up and swallow the glowing coals in the grate, leaving the hearth cold, cheerless and inhospitable. Soft drinks will be *de rigueur* when even the smallest quantity of alcohol imbibed by one of your guests may cause a dangerous conflagration. Insurance premiums will rise to prohibitive heights.

As to academic activities proper, what is to happen at lectures, tutorials and examinations? It is not easy, at the best of times, however learned you may be, to keep the attention of a number of high-spirited undergraduates when you are holding forth on the distinguishing characteristics of the Parnassian School of French poetry, the romantic tendencies in German literature after the death of Goethe, or the development of the psychological novel in the Soviet Union. Your dignity is apt to suffer, and the discipline of your class is liable to deteriorate, if one of their number punctuates your opening sentences by breathing flames across the room, or seeks to create a diversion by producing a string of sausages out of your pocket. How, moreover, can the invigilator keep order in the examination-room if one of the candidates causes a red-hot poker to materialize out of nowhere, threatening the persons and the papers of his immediate neighbours, and causing alarm and despondency among those at greater distance?

No—though our great universities should be open to all, there are distinct arguments against disrupting academic life in such a manner. There is, however, one way which will provide a reasonable compromise, and that is to add, to the six Faculties of Art, Science, Law, Divinity, Medicine and Music, a seventh, based on the precedent set in mediæval times by Dr. Faustus. An M.A. (Fire-eating) would look well after anyone's name—especially if it happens to be Ivanov Khan. It will then be only a matter of time before the Vice-Chancellor begins to confer doctorates *honoris causa,* in the same Faculty, on figures eminent in our public life. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Cinematograph Exhibition—*Licence issued for weekdays with condition as to Sunday opening—"Club" holding exhibitions on Sundays.*

At a cinema in my licensing division a club has been formed with a membership of about 200, which meets each Sunday at a local cinema when a special "A" or "U" certificate film is shown.

Rules have been provided, one of which refers to the fact that all applications must be in the hands of the secretary 24 hours before the exhibition of a film. The rules also provide that the cinema, which is licensed six days only, shall be rented from the proprietors for the purpose of exhibiting films by the club on Sundays. A registration fee of 2*s.* is charged for the membership card, and there is also provision for junior membership on payment of a fee of 1s.

Members attending a performance donate a subscription for which a ticket duly stamped by the Inland Revenue Authority is issued.

It would appear that there is no public showing of the films on Sundays, but no qualifications are made in respect of membership except that it is expressed to be "on an elective basis to all persons over 16 years of age," although young persons between seven and 16 years of age, admitted as junior members, can attend if accompanied by a parent or guardian, and on payment of the appropriate subscription relative to each performance.

The cinematograph licence granted provides that "No exhibition in respect of which the licence is granted shall take place on any Sunday, Christmas Day or Good Friday without the consent of the licensing authority in that behalf being first obtained."

Section 5 of the Cinematograph Act, 1952, related to exempted exhibitions to which the public are not admitted or to which the public are admitted without payment, states at subs. 1 (*d*) that "in connexion with the giving of an exempted exhibition in premises in respect of which a licence under the Act of 1909 is in force no condition or restriction on or subject to which the licence was granted shall apply except in so far as it relates to the matters specified in para. (*a*) of subs. (1) of s. 2 of this Act."

In view of the effect of s. 5 of the Act of 1952, would it be possible for the police to prosecute the licensee in respect of a breach of the condition above referred to?

NABUR.

Answer.

In our opinion, our correspondent's question falls far short of establishing that s. 5 of the Cinematograph Act, 1952 (which relates to the exemption of non-commercial exhibitions) has any application to the matter.

The justices would be entitled to examine all the evidence touching the organization and administration of the club, and to decide on that evidence whether the "club" is genuine. The expression "non-commercial" appears only in the marginal note to s. 5 of the Cinematograph Act, 1952, but "although it forms no part of the section, it is of some assistance, inasmuch as it shows the drift of the section" (*per* Collins, M.R. in *Bushell* v. *Hammond* (1904) 68 J.P. 370). Who derives profit from this club? Who bears its losses?

On the information given, there seems to be ground for a *prima facie* suggestion that the club's sole object is to do what otherwise would patently be unlawful; that the membership is drawn from the "public" into a club of so vague a character that its members do not sink their identity as members of the public when they become members of the club: in other words, that the formation of the club is a transparent device to avoid the burdens of the Cinematograph Acts. The justices might think that well-known things do not become something else merely by calling them by other names: for instance, we are told that "members donate a subscription for which a ticket duly stamped by the Inland Revenue Authority is issued": no ticket so stamped is required where one "donates a subscription," but it is required where one is "admitted for payment to any entertainment where the payment is subject to entertainments duty" (*see* Finance (New Duties) Act, 1916, s. 1 (2)). Even if an indulgent view is taken of the club, it will be difficult to contend that parents or guardians accompanying junior members (between seven and 16 years of age) "on payment of the appropriate subscription relative to each performance" fall outside the terms of s. 5 (1) of the Cinematograph Act, 1952—"to which the public are not admitted or to which the public are admitted without payment."

We think that it may be tested in a prosecution:

(*a*) Whether the exhibition is one for which a licence should be obtained under the Cinematograph Act, 1909, and the Sunday Entertainments Act, 1932; and

(*b*) Whether Sunday opening is in breach of the condition of the licence granted under the Cinematograph Act, 1909 (*see London County Council* v. *Bermondsey Bioscope Co.* (1911) 75 J.P. 53).

2.—Closed Churchyards—*Liability of local authority to third party through damage caused by falling tree.*

In your reply to P.P. 1 at 118 J.P.N. 191, you expressed the view that where a local authority has taken over from a parochial church council the functions of maintaining or repairing a closed churchyard as provided for by s. 269 of the Local Government Act, 1933, such local authority would be entitled to prune a tree or to cut off dangerous branches or even, if absolutely necessary for safety, to cut down a tree although the tree is not the property of the local authority. I shall be glad to have your opinion as to the extent to which a local authority can be compelled as distinct from entitled to carry out such works of forestry in closed churchyards after a certificate has been issued under s. 18 of the Burial Act, 1855, and as to what, in your opinion, is the maximum liability of local authorities as regards the maintenance of trees in such closed churchyards. My council have received a claim in respect of damage caused by a tree in a closed churchyard falling onto adjoining premises owned by a firm of builders. The churchyard is maintained by my council under s. 269 of the Local Government Act, 1933. I have expressed my view to the claimants that my council's duty to maintain the churchyard "in decent order" under s. 18 of the Burial Act, 1855, does not extend to the carrying out of works of forestry to the trees in the churchyard and *a fortiori* does not impose on the council liability for any damage caused to third parties arising from the condition of the trees.

A statute of 35 Edward I entitled "Ne Rector prosternat Arbores in Cemiterio" (7 *Halsbury's Statutes*, 2nd edn., p. 649) seems to make it clear that the incumbent is solely responsible for trees growing in a churchyard, whether or not it is a closed churchyard in respect of which a s. 18 certificate has been issued.

E.F.E.

Answer.

The statute of Edward I was passed for different purposes, than that of determining liability in tort, but we agree that the liability (if any) follows the ownership, and is not transferred to the local authority by s. 18 of the Burial Act, 1855. They might be found liable if they performed their permitted functions under that Act negligently, whereby a person suffered injury.

3.—Guardianship of Infants—*Mother abroad—Arrears—Enforcement.*

Mrs. A obtained an order under the Guardianship of Infants Acts in the magistrates' court at X in respect of a child of her marriage. She later divorced her former husband, remarried, and has now emigrated to America, leaving the child in the possession of its maternal grandmother in England.

Because Mrs. A had placed herself outside the jurisdiction of the English courts, the clerk of the magistrates' court to whom the periodical payments are payable considered it unreasonable to proceed in his own name under s. 52 (3) of the Magistrates' Courts Act, 1952, to enforce arrears which have accrued due, and so left Mrs. A to proceed under s. 52 (4) and r. 4 (2).

Mrs. A then authorized, in writing, the maternal grandmother of the child to make a complaint on her behalf under r. 4 (2) for the enforcement of the arrears.

The maternal grandmother made her complaint on behalf of Mrs. A before the justices at court X and they were satisfied she was duly authorized by Mrs. A in that behalf. The complaint was forwarded, in accordance with the provisions of r. 49 (2) to the clerk of court Y who placed it before his court in accordance with r. 49 (3).

Court Y refused to issue a summons on the complaint, and, upon returning the complaint to court X, stated (in effect) that, if periodical payments are payable through the clerk of a court, under no circumstances would court Y issue a summons upon a complaint made by an authorized agent under r. 4 (2).

In the particular circumstances of this case (having regard to the fact that the clerk at court X will not proceed in his own name and that the complainant is unable to make her complaint in person) is Mrs. A authorized by r. 4 (2) to make her complaint by authorized agent other than solicitor or counsel? The case of *Foster* v. *Fyfe* (1933) 60 J.P. 423, would appear to authorize this course. On the other hand, the complainant will not appear on the hearing of any summons and the authority of the maternal grandmother to institute the proceeding on behalf of Mrs. A may be questioned. I shall be glad for your opinion. Q. SILVER.

Answer.

In our opinion the complainant is authorized by r. 4 (2) to make the complaint by some authorized person other than her solicitor or counsel, and at the hearing of the complaint she may appear by solicitor or counsel (s. 99, Magistrates' Courts Act, 1952), who may call such witnesses as are available.

If, however, the arrangement as to custody is more than temporary, the grandmother might apply under s. 3 of the Affiliation Orders Act, 1914, for a variation of the order so as to provide that payments should be made to her. By s. 53 of the Children Act, 1948, an order of a magistrates' court for the payment of money under the Guardianship of Infants Act, 1886, may be varied in like manner as an affiliation order, and the enactments relating to affiliation orders apply accordingly.

4.—Landlord and Tenant—*Allotments—Allotment holder's interest ended by ending of lessor's interest.*

Land was let on lease by A to my council in 1924 and sub-let by the council to an allotments association for use as allotments. In November, 1955, A gave the council 12 months' notice to quit, terminating on December 25, 1956, and the council in its turn also served on the association a similar notice.

The association now claim compensation:

(1) for crops and manure under the Allotments Act, 1922, and

(2) for disturbance under the Allotments Act, 1950, s. 3.

In my opinion the first claim is in order but the claim for disturbance should be disallowed in view of the fact that 12 months' notice to quit was given. The association refer to s. 3 (1) (*b*) of the Act of 1950.

The Conveyancer (vol. 15, no. 2, March–April 1951) states:

"Further encouragement should result from s. 3 of the 1950 Act, which for the first time gives the tenant of an allotment garden a right to compensation for disturbance, of an amount equal to one year's rent. This right is not given where the tenancy is terminated by notice to quit; the fact that the tenant must be given 12 months' notice has been thought to be a sufficient protection. Compensation for disturbance is given where the tenancy is terminated by re-entry under s. 1 (1) (*b*), (*c*), or (*d*) of the 1922 Act, also where the landlord's own tenancy terminates, and where the landlord is a local authority who have let unoccupied land under s. 10 of the 1922 Act and whose right of occupation has itself terminated in accordance with that section." ARMOR.

Answer.

We do not think the suggestion that the council's having given the association 12 months' notice to quit deprived them of the right to compensation is sound. Section 1 of the Act of 1950 says that 12 months' notice is to be the minimum, and it may be because of this long period that no compensation for disturbance is given when the tenancy is ended by notice to quit, as stated by *The Conveyancer* in the extract which you quote. But s. 3 gives an unequivocal right where the landlord is himself a tenant, and the allotment holder's tenancy is ended by the ending of his landlord's interest. As between the parties concerned in the matter of compensation, this right of the tenant cannot in our opinion be affected by the mode in which his landlord's interest came to an end (by notice, by effluxion of time, or otherwise), nor can it in our opinion be taken away by the intermediate tenant's having gone through the motion of serving a superfluous notice.

5.—Licensing—*Removal of on-licence—Whether off-licence may be granted to premises from which on-licence removed.*

The secretary of a firm of brewers is at present the holder of a full on-licence in respect of certain premises A, now consisting of an inner office and an outer office-shop and bar, stores, etc. Originally there was also another large shop, but this was isolated from the licensed premises with the approval of the licensing justices in 1953. In the late 19th century, when the licence was granted, the premises were a public house, but were rebuilt and converted into office and shop accommodation later, the on-licence being retained.

Since the conversion into office and shop accommodation there has been practically no on-licence trade, but the off-licence trade is considerable.

It is now desired to have the full on-licence transferred to premises B in the same town at present holding a beer on-licence only (which would be surrendered), and at the same time apply for an off-licence only at the premises A from which the full on-licence is removed.

There appear to be two methods of making this application:

1. By applying for a new full on-licence at premises B, and offering to surrender (*a*) the existing beer on-licence and (*b*) the existing full on-licence at premises B.

2. By applying for an ordinary removal of the full licence from A to B.

And in either case at the same time applying for an off-licence at premises A.

I would be obliged with your opinion and comments as to:

(*a*) Whether it is in order to apply for an off-licence at premises already holding a full on-licence which it is proposed to remove or surrender.

(*b*) In view of the considerable off-sales (which can presumably be taken into account in assessing the monopoly value) no loss to the public would accrue by granting a removal, and that in the circumstances whether an ordinary removal is the proper application to make?

NERS.

Answer.

(*a*) There is no legal impediment. The practice of granting a licence of one kind for premises in respect of which a licence of a different kind has hitherto been held is well established, although usually, unlike the present proposal, it is a larger licence granted to take the place of the smaller, as, *e.g.*, when a "full" on-licence is granted to take the place of a beerhouse licence.

(*b*) We agree with our correspondent that effect may be given to the scheme in either of the two ways that he mentions. We would not say that either, contrasted with the other, is "the proper application to make." It may be thought appropriate to make application in both forms, leaving it for the licensing justices to exercise a preference for one over the other. If a new on-licence is granted coupled with the surrender of the on-licence at A and the beerhouse licence at B, there will be a set-off in monopoly value in accordance with s. 7 of the Licensing Act, 1953, which, if the appraisal made by our correspondent is correct, could produce the result that no monopoly value will be payable.

6.—Private Street Works—*Fixed Apportionment Expenses—Date when recoverable.*

A point has arisen on the interpretation of the Private Improvement Expenses (Rate of Interest) Order, 1956 (S.I. 1468), which came into operation on October 1, 1956. The Order replaces the Private Improvement Expenses (Rate of Interest) Order, 1955 (S.I. 1871), and fixes the rate of interest recoverable by a local authority under ss. 13 and 14 of the Private Street Works Act, 1892, at 5½ *per cent.* Paragraph 4 of the Order provides that the new rate of interest shall not apply to "any expenses which, or any part or instalment of which, became recoverable by a local authority before the commencement of this Order," *i.e.* October 1, 1956. Thus, in ascertaining in any given case whether the new rate of interest is to apply to expenses incurred by the local authority under the Private Street Works Act, 1892, it must be determined when the expenses became "recoverable."

The terms of s. 12 (1) of the Private Street Works Act, 1892, seem to indicate that the sums apportioned can be recoverable at any time after the service of the notices of the final apportionment upon the owners of the premises concerned and some support is given to this view by the case of *Maguire* v. *Leigh-on-Sea U.D.C.* (1906) 70 J.P. 479. It can be argued, however, that since under s. 13 of the Act the interest runs from the date of the final apportionment, the expenses should be deemed recoverable as from that date for the purpose of deciding whether the change in interest rates should apply, irrespective of the date of the notice of final apportionment.

A further point of significance is that, for the purposes of the Limitation Act, 1939, the period of limitation only runs from the date of the demand by the local authority for payment of expenses incurred: *Dennerley* v. *Prestwich U.D.C.* (1930) 94 J.P. 34, so that the expenses are only recoverable after the demand has been made. It should be mentioned that it is the practice in my borough for the demand for payment to be sent to the owners of the premises concerned after the period for objection to the

final apportionment has elapsed, since it was held in *Simcox* v. *Handsworth Local Board* (1882) 46 J.P. 260, that a demand for payment contained in a notice of apportionment was not a " notice of demand " within s. 257 of the Public Health Act, 1875.

A situation could arise, either in connexion with the Private Improvement Expenses (Rate of Interest) Order, 1956, or in connexion with any similar Order which may be made in the future to change the current rate of interest, in which it would fall to be determined whether the expenses upon which interest was to be charged were recoverable at the date on which the Order came into force, since it is only by this means that the relevant rate of interest to be charged can be ascertained. I would therefore appreciate your opinion as to when such expenses as the above become recoverable. PUSTLE.

Answer.

Interest on expenses runs from the date of the final apportionment, provided notice thereof has been given; *see* ss. 12 and 14 of the Private Street Works Act, 1892. If there is an objection to the final apportionment this will not be effective until the objection has been settled. The expenses are not in our opinion, in the light of the cases in the query, recoverable until demand has been made, and the new rate of interest will apply as from the date of a demand, separately made, on or after the date when there is a proper final apportionment.

7.—Public Health (Buildings in Streets) Act, 1888—*Building in back garden.*

A house being built beside a new road backs on an existing road, there being 20 *ft.* of garden at the front and 25 *ft.* at the back. The owner is unwilling to build a garage at the side, as it would close the independent access to the back garden. He therefore finally wishes to build the garage in the back garden. Can the urban authority prevent this by claiming that their consent is required under s. 3 of the Public Health (Buildings in Streets) Act, 1888? The new road will be less important than the existing road.

ENRIX II.

Answer.

The Act of 1888 applies to buildings in a street, and the front main wall must be that which faces the front street. The phrase " in a street " is not a term of art, and must be construed according to ordinary speech. Where buildings have a street behind them, as well as that which serves as access to the main doors, it may in some cases be possible to argue that they are " in " each street, but even so we doubt whether there can be two " front " main walls. It might be possible in the present case to convince the magistrates that the front main wall was that which looked towards the existing street, even though the query itself says that this street is at the back, but in that event the Act of 1888 would not prevent building between the new street and the walls of the houses, and we are bound to say that, where a new street is laid out as principal means of access to new houses erected at the same time, we should expect magistrates to say that this was the front.

8.—Road Traffic Acts—*Owner in A required by police in B to give information under s.* 113 (3) *of the* 1930 *Act—Venue if he fails to give the information—Owner a limited company—Who should be summoned?*

An offence is alleged to have been committed under the Road Traffic Act in the petty sessional division of A. The police require information from the owner of the motor car concerned and write a letter to him requesting this. The owner lives in the petty sessional division of B which is in a different county from A. The owner does not provide the information requested and the police send an officer to see him at B. The owner still does not supply the required information and the police wish to proceed against him for an offence under s. 113 of the Road Traffic Act. The police contend that the correct division in which to proceed is A. Further it is found that the owner of the car is a limited company. Can the company commit an offence under this section or should the servants be summoned? Do you agree that the court at A has jurisdiction and who is the correct defendant? JOLEY.

Answer.

The offence is committed in the place in which the person is to whom the information should have been furnished. If the offence is based upon a request made by post from A requiring a reply to be sent to A we think that the offence is committed there. If the offence depends upon a failure by the owner to answer at B questions put to him there by a police officer in person the offence is committed at B.

The offence under s. 113 (3) (*a*) can be committed only by the owner and, if the owner is a limited company, the company must be summoned.

9.—Road Traffic Acts—*Warning of intended prosecution—Cyclists—Need for warning for offences against s.* 49 *and* 50 *of the* 1930 *Act.*

In P.P. 19 at p. 45, *ante*, you express the view that notice of intended prosecution should be given to cyclists and any other persons who infringe ss. 49 or 50 of the Road Traffic Act, 1930 (disobeying traffic signs or police signals or leaving vehicles in dangerous positions). Your readers may be interested in the arguments for a contrary view.

Section 21 of the Road Traffic Act, 1930, requires an offender who has driven recklessly or carelessly or at an excessive speed *inter alia*, to be given notice within 14 days of the possibility of prosecution but such notice can also be served on the " registered owner " of the vehicle. Motor vehicles have " registered owners " but carts, cycles and barrows do not.

The Road Traffic Act, 1956, s. 11 (1) (*e*), provides that " s. 21 . . . in so far as it relates to offences against (ss. 11 and 12 of the Road Traffic Act, 1930) but with the omission of the reference to registered owners " shall apply to persons riding bicycles and tricycles as it applies to drivers of motor vehicles. Section 30 of the 1956 Act provides that s. 21 shall apply to offences under ss. 49 and 50 of the 1930 Act. Section 30 makes no reference to registered owners and this at once raises a doubt whether s. 30 was therefore intended to apply in respect of vehicles which do not have registered owners. It may well be that s. 30 does apply not only to motor vehicles but also to carts and barrows even though they have no registered owner, notwithstanding that this point as to registered owners has been picked up in s. 11 of the same (1956) Act but not in s. 30. So far as cyclists offending against ss. 49 and 50 are concerned, however, s. 11 (1) (*e*) provides that s. 21 shall apply " *in so far as it relates to* (*dangerous and careless riding*)." I would suggest that the plain meaning of the words italicized shows that s. 21, in so far as it applies to other offences by cyclists, is excluded.

It may or may not have been the intention of the draftsman to apply s. 21 to all offences by cyclists but, if there is a doubt, then surely the words used by him must be construed in their ordinary meaning and it is suggested that the ordinary meaning is the one given in the last paragraph.

Does any presumption arise from the fact that s. 30 occurs later in the 1956 Act than s. 11? The answer, I think, is found in 31 *Halsbury* (2nd edn.), 484, where it is said that a later section will prevail over an earlier one only if they are irreconcilable; in the present instance, it is submitted that they are not irreconcilable at all but that a perfectly clear meaning can be extracted from the reference to the application of s. 21 in s. 11 of the 1956 Act. K. CAMBRIAN.

Answer.

We do not think that our correspondent's argument is a sound one. The view which we take does not mean that ss. 11 (1) (*e*) and 30 of the 1956 Act are inconsistent with one another.

The main purpose of s. 11 of the 1956 Act is to apply to cyclists the penal provisions of ss. 11, 12 and 15 of the 1930 Act. The subsequent provisions in s. 11 of the 1956 Act are, in our view, incidental to and consequent upon those penal provisions being so applied.

Section 30 of the 1956 Act has no relation to s. 11 of that Act, and enacts in perfectly general terms, with no proviso excluding any particular class of road user, that s. 21 of the 1930 Act " shall apply to offences under ss. 49 and 50 of that Act." We do not think that there is any doubt on the point, but if there were we think that it must be resolved in favour of the offender because it is not a penal provision but is one conferring a " benefit " on him.

10.—Sewers and Water Mains—*Compensation for laying—Legal and other costs.*

With reference to P.P. 12 at p. 44, would your answer be the same in the case of surveyor's fees, in place of solicitor's fees mentioned? PENTA.

Answer.

We think not, though in practice a question may arise with the district valuer, district auditor, or loan sanctioning authority, whether the particular professional assistance was reasonably necessary. The basis of our answer at p. 44, *ante*, where a solicitor had been employed to conduct correspondence, was that the district valuer's contention on this point should not, in our opinion, be contested. A claim would probably be accepted if the surveyor had been employed, like the vendor's valuer, in the case at p. 44, in order to assist the vendor in finding the value of the property.